RECEIVED
2 1998

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

No. 97-500

WILLIAM JEFFERSON CLINTON, ET AL., APPELLANTS

v.

MATTHEW GLAVIN, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

JOINT MOTION TO EXPEDITE CONSIDERATION OF JURISDICTIONAL STATEMENT, TO ESTABLISH EXPEDITED SCHEDULE FOR BRIEFING AND ARGUMENT IF PROBABLE JURISDICTION IS NOTED, AND TO CONSOLIDATE THIS CASE WITH NO. 98-404 FOR PURPOSES OF ORAL ARGUMENT

The district court in this case has held that the Commerce Department's plan to employ statistical sampling in conducting the decennial census for the year 2000 would violate the Census Act. The jurisdiction of the district court was invoked under Section 209(e)(1) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (1998 Appropriations Act), Pub. L. No. 105-119, 111 Stat. 2482. Section 209(e)(1) also provides that "[a]ny final order or injunction of a United States district court that is issued pursuant to an action brought under this section shall be reviewable by appeal directly to the Supreme Court of the United States." 111 Stat. 2482. A notice of appeal to this Court was filed on September 25, 1998.

4 pp

The Solicitor General, on behalf of the defendants in this case, is filing a jurisdictional statement together with this motion. Appellees agree that probable jurisdiction should be noted and do not plan to file a separate response to the jurisdictional statement.

On September 10, 1998, this Court noted probable jurisdiction in United States Department of Commerce, et al. v. United States House of Representatives, et al., No. 98-404. That case also involves a suit brought under Section 209(e)(1) of the 1998 Appropriations Act challenging the Commerce Department's plan for the 2000 census. The Court established the following expedited schedule for briefing and argument: briefs for the appellants and the intervenor-defendants to be filed and served by 3 p.m. on October 6, 1998; brief for appellee United States House of Representatives to be filed and served by 3 p.m. on November 3, 1998; reply briefs, if any, to be filed and served by 3 p.m. on November 17, 1998; and oral argument to be held on November 30, 1998.

The instant case involves essentially the same statutory and constitutional challenges to the Commerce Department's plan as does the suit brought by the House of Representatives. The district court in each of the two cases concluded that the plan violates 13 U.S.C. 195 and is therefore invalid. If it were undisputed that the suit brought by the House of Representatives is justiciable,

the Court might simply choose to hold the jurisdictional statement in the instant case pending its disposition of No. 98-404.

As the jurisdictional statement in No. 98-404 explains (at 13-15), however, the appellants in that case contend that the suit filed by the House of Representatives does not satisfy the requirements of Article III. Although the standing of the appellees in the instant case is also contested, the jurisdictional issues presented by the two cases are quite distinct. Because appellees take the position that the Court can reach the merits of the challenge to the Census Bureau's plan for the 2000 census in this case even if it cannot do so in No. 98-404, we respectfully move that the Court note probable jurisdiction in this case and consolidate it for oral argument with No. 98-404.

Accordingly, defendant-appellants William Jefferson Clinton, et al., and plaintiff-appellees Matthew Glavin, et al.,[1] respectfully propose that the Court adopt the following expedited schedule for briefing and argument: opening brief for the

---

[1] Four groups of litigants -- Richard A. Gephardt, et al.; the Legislature of the State of California, et al.; the City of Los Angeles, et al.; and the National Korean American Service & Education Consortium, Inc., et al. -- moved for leave to intervene as defendants in the district court. The district court did not rule on the motions to intervene. Although the court's opinion is not entirely clear on this point, the list of defendants included at the beginning of the opinion (see J.S. App. 1a) indicates that the district court did not regard the putative intervenors as parties to the case. But see id. at 2a ("Now before the Court are the defendants' and intervenor-defendants' motions to dismiss the plaintiffs' complaint").

appellants to be filed and served on October 20, 1998; appellees' brief to be filed and served on November 4, 1998 (one day after the appellee House of Representatives' brief is due in No. 98-404); reply brief for the appellants to be filed and served on November 17, 1998 (the same day on which the reply brief is due in No. 98-404); and oral argument to be held on November 30, 1998.

Respectfully submitted.

Seth P Waxman/cs

MICHAEL A. CARVIN
Counsel for Appellees

SETH P. WAXMAN
Solicitor General

OCTOBER 1998